

§ 78.3

40 CFR Ch. I (7–1–15 Edition)

of any person failing to respond as requested.

(b) *Availability of information.* The availability to the public of information provided to, or otherwise obtained by, the Administrator under this subpart shall be governed by part 2 of this chapter.

(c) *Computation of time.* (1) In computing any period of time prescribed or allowed under this part, except as otherwise provided, the day of the event from which the period begins to run shall not be included, and Saturdays, Sundays, and federal holidays shall be included. When the period ends on a Saturday, Sunday, or federal holiday, the stated period shall be extended to include the next business day.

(2) Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time prescribed or allowed under this part for the filing of a responsive document or for otherwise responding.

[76 FR 48379, Aug. 8, 2011]

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a)(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of this chapter and that is appealable under § 78.1(a) of this part:

(i) The designated representative for the unit covered by the decision;

(ii) The authorized account representative for an account covered by the decision; and

(iii) Any interested person with regard to the decision.

(2) The following persons may petition for administrative review of a decision of the Administrator that is made under part 73 of this chapter and that is appealable under § 78.1(a):

(i) The authorized account representative for any Allowance Tracking System account covered by the decision; and

(ii) With regard to the decision on the allocation of allowances from the Conservation and Renewable Energy Reserve, the certifying official whose application is covered by the decision.

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under part 97 of this chapter and that is appealable under § 78.1(a) of this part:

(i) The NO_x authorized account representative for the unit or any NO_x Allowance Tracking System account covered by the decision; or

(ii) Any interested person with regard to the decision.

(4) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NO_x Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(5) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through III of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR SO₂ Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(6) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAAA through IIII of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR Ozone Season NO_x Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(7) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II of

Environmental Protection Agency

§ 78.3

part 97 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NO_x Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(8) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through III of part 97 and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR SO₂ Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(9) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAAA through III of part 97 and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR Ozone Season NO_x Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(10) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAAAA, BBBB, CCCCC, and DDDDD of part 97 of this chapter:

(i) The designated representative for a unit or source, or the authorized account representative for any Allowance Management System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(11) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart RR of part 98 of this chapter:

(i) The owner or operator of a facility covered by the decision.

(ii) Any interested person with regard to the decision.

(b)(1) Within 30 days following issuance of a decision under § 78.1 of this part by the Administrator, any person under paragraph (a) of this section may file a petition with the Environmental Appeals Board for administrative review of the decision. If no petition for administrative review of a decision under § 78.1 of this part is filed within such period, the decision shall become final agency action and shall not meet the prerequisite for judicial review under § 78.1(a)(2).

(2) The petition may include a request for an evidentiary hearing to resolve any disputed issue of material fact concerning the decision.

(3) At the same time that the petition for administrative review is filed, the petitioner shall:

(i) Serve a copy of the petition on the designated representative or authorized account representative under paragraph (a)(1), (2), and (10), and (a)(11) of this section (unless the designated representative or authorized account representative is the petitioner) or the NO_x authorized account representative under paragraph (a)(3) of this section (unless the NO_x authorized account representative is the petitioner) or the CAIR designated representative or CAIR authorized account representative under paragraph (a)(4), (5), (6), (7), (8), or (9) of this section (unless the CAIR designated representative or CAIR authorized account representative is the petitioner) and the Administrator; and

(ii) Mail a notice of the petition to the air pollution control agencies of affected States and any interested person.

(c) The petition for administrative review under this part shall state with specificity:

(1) Each material factual and legal issue alleged to be in dispute and any such factual issue for which an evidentiary hearing is sought;

(2) A clear and concise statement of the nature and scope of the interest of the petitioner;

(3) A clear and concise brief in support of the petition, explaining why the factual or legal issues are material

and, if an evidentiary hearing is requested, why direct and cross-examination of witnesses is necessary to resolve such factual issues;

(4) If an evidentiary hearing is requested, the time estimated to be necessary for an evidentiary hearing;

(5) If an evidentiary hearing is requested, a certified statement that, in the event of an evidentiary hearing, and without cost or expense to any other party, any of the following persons shall be available to appear and testify:

(i) The petitioner; and

(ii) Any officer, director, employee, consultant, or agent of the petitioner.

(6) Specific references to the contested portions of the decision; and

(7) Any revised or alternative action of the Administrator sought by the petitioner as necessary to implement the requirements, purposes, or policies of title IV of the Act, subparts AA through II of part 96 of this chapter, subparts AAA through III of part 96 of this chapter, subparts AAAA through IIII of part 96 of this chapter, or part 97 of this chapter, as appropriate.

(d) In no event shall a petition for administrative review be filed, or review be available under this part, with regard to:

(1) Any provision or requirement of part 72, 73, 74, 75, 76, or 77 of this chapter, including any standard requirement under § 72.9 of this chapter and any emissions monitoring or reporting requirements under part 75 of this chapter;

(2) Any provision or requirement of part 97 of this chapter, including the standard requirements under § 97.6 of this chapter and any emission monitoring or reporting requirements under part 97 of this chapter.

(3) The reliance by the Administrator on a certificate of representation submitted by a designated representative or a certification statement submitted by an authorized account representative under the Acid Rain Program or on an account certificate of representation submitted by a NO_x authorized account representative or an application for a general account submitted by a NO_x authorized account representative under the NO_x Budget Trading Program or on a certificate of representa-

tion submitted by a CAIR designated representative or an application for a general account submitted by a CAIR authorized account representative under subparts AA through II, subparts AAA through III, subparts AAAA through IIII of part 96 of this chapter or under part 97 of this chapter; and

(4) Actions of the Administrator under sections 112(r), 113, 114, 120, 301, and 303 of the Act.

(5) Any provision or requirement of subparts AA through II of part 96 of this chapter, including the standard requirements under § 96.106 of this chapter and any emission monitoring or reporting requirements.

(6) Any provision or requirement of subparts AAA through III of part 96 of this chapter, including the standard requirements under § 96.206 of this chapter and any emission monitoring or reporting requirements.

(7) Any provision or requirement of subparts AAAA through IIII of part 96 of this chapter, including the standard requirements under § 96.306 of this chapter and any emission monitoring or reporting requirements.

(8) Any provision or requirement of subparts AA through II of part 97 of this chapter, including the standard requirements under § 97.106 of this chapter and any emission monitoring or reporting requirements.

(9) Any provision or requirement of subparts AAA through III of part 97 of this chapter, including the standard requirements under § 97.206 of this chapter and any emission monitoring or reporting requirements.

(10) Any provision or requirement of subparts AAAA through IIII of part 97 of this chapter, including the standard requirements under § 97.306 of this chapter and any emission monitoring or reporting requirements.

(11) Any provision or requirement of subparts AAAAA, BBBBB, CCCCC, or DDDDD of part 97 of this chapter, including the standard requirements under § 97.406, § 97.506, § 97.606, or § 97.706 of this chapter and any emission monitoring or reporting requirements.

Environmental Protection Agency

§ 78.4

(12) Any provision or requirement of subpart RR of part 98 of this chapter.

[58 FR 3760, Jan. 11, 1993, as amended at 60 FR 17132, Apr. 4, 1995; 62 FR 55488, Oct. 24, 1997; 69 FR 21645, Apr. 21, 2004; 70 FR 25338, May 12, 2005; 71 FR 25379, Apr. 28, 2006; 75 FR 75078, Dec. 1, 2010; 76 FR 48379, Aug. 8, 2011]

§ 78.4 Filings.

(a)(1) All original filings made under this part shall be signed by the person making the filing or by an attorney or authorized representative, in accordance with the following requirements:

(i) Any filings on behalf of owners and operators of a affected unit or affected source, TR NO_x Annual unit or TR NO_x Annual source, TR NO_x Ozone Season unit or TR NO_x Ozone Season source, TR SO₂ Group 1 unit or TR SO₂ Group 1 source, TR SO₂ Group 2 unit or TR SO₂ Group 2 source, or a unit for which a TR opt-in application is submitted and not withdrawn shall be signed by the designated representative. Any filing on behalf of persons with an ownership interest with respect to allowances, TR NO_x Annual allowances, TR NO_x Ozone Season allowances, TR SO₂ Group 1 allowances, or TR SO₂ Group 2 allowances in a general account shall be signed by the authorized account representative.

(ii) Any filings on behalf of owners and operators of a NO_x Budget unit or NO_x Budget source shall be signed by the NO_x authorized account representative. Any filing on behalf of persons with an ownership interest with respect to NO_x allowances in a general account shall be signed by the NO_x authorized account representative.

(iii) Any filings on behalf of owners and operators of a CAIR NO_x, SO₂, or NO_x Ozone Season unit or source shall be signed by the CAIR designated representative. Any filings on behalf of persons with an ownership interest with respect to CAIR NO_x allowances, CAIR SO₂ allowances, or CAIR NO_x Ozone Season allowances in a general account shall be signed by the CAIR authorized account representative.

(iv) Any filings on behalf of owners and operators of a facility covered by subpart RR of part 98 of this chapter shall be signed by the designated representative.

(2) The name, address, e-mail address (if any), telephone number, and facsimile number (if any) of the person making the filing shall be provided with the filing.

(b)(1) All data and information referred to, or in any way relied upon, in any filings made under this part shall be included in full and may not be incorporated by reference, unless the data or information is contained in the administrative record for the decision being appealed.

(2) Notwithstanding paragraph (b)(1) of this section, State or Federal statutes, regulations, and judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other publicly and generally available reference material may be incorporated by reference. Any person incorporating such materials by reference shall provide copies of the materials as instructed by the Environmental Appeals Board or the Presiding Officer.

(3) If any part of any filing is in a foreign language, it shall be accompanied by an English translation verified by the person making the translation, under oath, to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations filed of material originally produced in a foreign language shall be accompanied by copies of the original material.

(4) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted or an index to the relevant portions of the document shall be included in the document.

(c)(1) Failure to comply with the requirements of this section or any other requirement in this part may result in the noncomplying portions of the filing being excluded from consideration. If the Environmental Appeals Board or the Presiding Officer determines on motion by any party or *sua sponte* that a filing fails to meet any requirement of this part, the Environmental Appeals Board or Presiding Officer may return the filing, together with a reference to the applicable requirements on which the determination is based. A